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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/058,519

01/28/2002

Brian Purser

1384/6

5395

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04/29/2004

Adams, Schwartz & Evans, P.A.
2180 Two First Union Center
Charlotte, NC 28282

EXAMINER

PRONE, JASON D

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 04/29/2004

2

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/058,519

Applicant(s)

PURSER, BRIAN

Examiner

Jason Prone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 17-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. In regards to claim 17 lines 8-9 and claim 26 lines 9-10, the phrase "including a second jaw including a second supporting surface for supporting the wearing flange" is unclear. It is uncertain where this support is on the second jaw and how the second jaw supports the wearing flange.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 17-22 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by LaBounty et al. (5,127,567).

'567 discloses the same invention including a first member (11) having a jaw on a first end (24) and a mounting attachment on a second end (12), that the first jaw includes a first supporting surface (48), a second member (28) pivotally mounted for movement about a first pivot axis (53), that the second member includes a second jaw

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(40) having second supporting surface (56) that the first and second jaw define an opening in-between (Fig. 1), that the length of the opening between the first and second jaws is less than the height of the rail whereby the wearing flange extends into the opening and is held in a stationary position (Fig. 2), that the second jaw is movable about the pivot axis relative to the first jaw between a wear flange receiving position and a wear flange breaking position (Fig. 2), that the wear flange is held in a stationary position in the breaking position by cooperation of the first and second members (Fig. 2), a power means mounted for cooperation with the first and second members for moving the first and second jaws relative to each other (57), that the wear flange is broken by the movement of the second jaw against the wear flange relative to the first jaw by the power means (Fig. 2), that the power means comprises a piston (58) and cylinder assembly (57), that the piston and cylinder assembly is powered by a vehicle to which the apparatus is attached (Abstract), that the second supporting surface includes a blade (50), that the length of the first and second jaws is at least the height of the wearing flange (Fig. 2), and that the first jaw includes a second first supporting surface positioned at an oblique angle (47).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over '567 in view of Pardoe. '567 discloses the invention but fails to disclose that the mounting attachment includes an attachment pivot mounting having an axis of rotation perpendicular to the axis of rotation of the first pivot axis. Pardoe teaches a mounting attachment includes an attachment pivot mounting (58) having an axis of rotation perpendicular to the axis of rotation of the first pivot axis (Fig. 4). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided '567 with the pivot mounting, as taught by Pardoe, to allow the apparatus a larger range of motion.

8. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over '567 in view of Detriche. '567 discloses the invention but fails to disclose that the axis of rotation of the attachment pivot is aligned with the axis of rotation of the perpendicular first pivot axis of the second member for maintaining the jaws in the same position. Detriche teaches an apparatus with the axis of rotation of the attachment pivot (F) that is aligned with the axis of rotation of the perpendicular first pivot axis of the second member for maintaining the jaws in the same position (8). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided '567 with an axis of rotation of the attachment pivot (F) that is aligned with an axis of rotation of the perpendicular first pivot axis, as taught by Detriche, to allow for a better knowledge of where the jaws are when operating the apparatus.

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9. Claims 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over '567 in view of Pardoe and Detriche as applied to claims 17-25 above. In light of the apparatus rejection, the method is inherent.

Response to Arguments

10. Applicant's arguments with respect to claim 17-29 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shigemizu, LaBounty ('032), LaBounty ('493), Berto, LaBounty et al. ('569), LaBounty et al. ('283), and Zakohji.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is 703-605-4287. The examiner can normally be reached on 7:30-5:00, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JP
April 21, 2004



Allan N. Shoap
Supervisory Patent Examiner
Group 3700